
STROOCK

September 21, 2023

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The Honorable Analisa Torres
United States District Judge
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *United States v Ho Wan Kwok, et al. No 23 Cr. 118 (AT)*

Dear Judge Torres:

This firm represents The Sherry-Netherland, Inc. (the “Sherry”) as creditor in the chapter 11 bankruptcy case of Genever Holdings LLC (“Genever US”) pending in the United States Bankruptcy Court for the District of Connecticut (the “Bankruptcy Court”) which is jointly administered with the individual chapter 11 bankruptcy case of Mr. Ho Wan Kwok (“Kwok”).¹ The Sherry also holds a substantial claim in the Kwok bankruptcy based upon Kwok’s guarantee of Genever US’ obligations to the Sherry.

We recently became aware of Kwok’s Motion for an Order and Writ Staying Bankruptcy Cases (which refer to, inter alia, the Genever US and Kwok bankruptcy cases as well as related adversary proceedings), or in the Alternative for Other Relief [ECF No. 129] (the “Stay Motion”) made to this Court in Kwok’s criminal case, and we write to respectfully request that Your Honor consider the position of the Sherry as an interested party which could be adversely impacted by the disposition of the Stay Motion.

The Sherry strongly objects to the proposed imposition of a stay with respect to the Genever US and Kwok bankruptcy cases (together the “Bankruptcy Cases”) for the

¹ By order dated November 21, 2022, the Bankruptcy Court approved the joint administration of the Chapter 11 cases of Kwok, Genever US and its immediate parent, Genever Holdings Corporation, known as Genever BVI. For avoidance of doubt, these cases are jointly administered but are not substantively consolidated or otherwise tied together and proceed independently and at their own pace.

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reasons set forth in the Response of Chapter 11 Trustee (of Kwok) and the Genever Debtors in opposition to the Stay Motion [ECF No. 145] (the “Opposition”), and joins in the Opposition. The Sherry takes no position with respect to the alternative relief sought in the Stay Motion.

Respectfully, the Sherry submits that the only court with jurisdiction to stay the Bankruptcy Cases is the Bankruptcy Court under 28 U.S.C. §1334. Accordingly, the Stay Motion should be denied as a matter of law. Further, the Bankruptcy Court alone has the benefit of access to the facts underlying the Bankruptcy Cases and of hearing from all interested parties when relief is sought.

Notwithstanding the foregoing, if Your Honor is inclined to consider the Stay Motion, the Sherry seeks to provide the pertinent facts to this Court, as they apply to the Genever US case, which are as follows:

Genever US purchased an apartment comprising the entire 18th floor, and related maids’ quarters (the “Apartment”) at the Sherry, which is a New York residential cooperative, from the Apartment’s prior owner in 2015. More specifically, in accordance with New York State coop law, Genever US purchased the shares attributable to the Apartment and took an assignment as lessee under the proprietary leases appurtenant to the Apartment (together the “Proprietary Lease”) which Proprietary Lease governs the rights and obligations of Genever US as lessee and the Sherry as lessor. The Sherry has an undisputed statutory and contractual first lien on the shares attributable to the Apartment to secure Genever US’ obligations under the Proprietary Lease which obligations include payment of monthly maintenance and assessments to the Sherry.

In January of 2020, Genever US stopped paying its maintenance, assessment and other obligations and the Sherry was compelled to commence proceedings in New York state court to recover the amounts owed and to remove Genever US as owner of the Apartment. On October 12, 2020, when the Sherry was in the process of obtaining the relief to which it was entitled, Genever US, whose sole major asset is the Apartment, filed a voluntary petition under Chapter 11 in the Bankruptcy Court for the Southern District of New York (the “SDNY Bankruptcy Court”), likely to stay the Sherry’s efforts in state court. Notwithstanding that nearly four years have passed, the Sherry still has not been paid the money it was owed in January, 2020. As of the October, 2020 bankruptcy filing, the Sherry was owed \$1,096,186.54 for maintenance, assessment, legal fees and other costs, all of which remains outstanding. In addition, the Sherry is owed not less than \$1,462,881.84 for amounts incurred post-petition, which amount is subject to increase with time pursuant to the Proprietary Lease and as a matter of law.

To be clear, the Sherry is not a faceless corporate creditor- these unpaid obligations by Genever US burden the other shareholders at the Sherry, apartment owners who are simply trying to meet their own obligations and who, for the last four years and

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foreseeable future until the Apartment is sold through the Genever US bankruptcy case, are compensating out of their own pockets for monies owed by Genever US.

On October 8, 2021, the SDNY Bankruptcy Court approved a consensual arrangement among all parties in the Genever US case establishing a framework for the sale of the Apartment and for the appointment of a sales officer to undertake the process of marketing the Apartment for sale (the “Sale Order”). On January 13, 2022, the SDNY Bankruptcy Court approved the retention of Sotheby’s International Realty as real estate broker to spearhead the marketing effort. The sale was recognized as a necessary step to provide a recovery to the Sherry and any other creditor, install a responsible financially sound party as the owner of the Apartment, and bring the Genever US bankruptcy to a conclusion. Notably, the filing of the Genever US bankruptcy and implementation of the sale process occurred prior to Kwok filing his individual Chapter 11 case in 2022 and certainly long before criminal charges were brought against him in 2023.

On February 15, 2022, Kwok filed his individual Chapter 11 before the Bankruptcy Court and on July 8, 2022, Luc Despins was appointed as the Chapter 11 Trustee of Kwok. Given that Kwok was the ultimate parent of Genever US, the Trustee took over the management of Genever US and on November 3, 2022, together with Genever US, obtained an order granting a transfer of venue of the Genever US bankruptcy to the Bankruptcy Court in Connecticut. The Trustee then asked the Bankruptcy Court to continue the sale process and honor the terms of the Sale Order, which the Bankruptcy Court did.

The sale process was on track in the Genever US bankruptcy (with the Apartment having been listed by the real estate broker) when a fire broke out at the Apartment on March 15, 2023, following Kwok’s arrest at the Apartment earlier that day. The fire not only ravaged the Apartment, it caused substantial damage to the Sherry and displaced some fifty other apartment owners from their apartments for months. Some have yet to return. Because of the extensive damage to the Apartment, remediation measures needed to be implemented on an immediate basis. The Sherry has been working tirelessly to address the fallout from the fire and to assist the Trustee as he restores the Apartment for sale. Through the bankruptcy process, Genever US is pursuing litigation against its insurance carrier to recover under its policies for damages resulting from the fire. It has also obtained authority from the Bankruptcy Court to undertake the remediation process and approval for financing of that process while not releasing Genever US’ insurance carrier of its liability therefor.

A stay of the Genever US bankruptcy would be devastating to the remediation process and the necessary sale of the Apartment. The delay would unfairly harm creditors, in particular, the Sherry and the shareholders of the Sherry who have waited years to recover from Genever US on its unpaid obligations and to have a suitable shareholder in the Apartment.

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Equally important, a stay would do nothing for Kwok because there is no “overlap” between his criminal case and the Genever US bankruptcy case. He has no economic interest in the Apartment; any funds in the Genever US estate will go first to pay creditors and then, if anything remains, to Genever US’s parent and lastly, to the Kwok bankruptcy estate as the ultimate equity holder, not to Kwok himself. Further, the path for Genever US to exit bankruptcy through a sale of the Apartment was well underway before Kwok was criminally charged such that there is no impact on Kwok’s rights occasioned by continuing the Genever US bankruptcy on its long established path to conclusion.

We cannot speak to the underlying reason that the Stay Motion was brought, but we submit that the Sherry and other creditors should not be collateral damage of a litigation and forum shopping strategy by Kwok in his criminal case that has no connection to the Bankruptcy Cases.

The Sherry and the undersigned as its counsel remain at this Court’s disposal to address any inquiries Your Honor may have.

Respectfully submitted,

/s/ Sherry Millman

Sherry Millman

cc: All Counsel of Record (by ECF)
Nicholas Bassett, Paul Hastings LLP (by email)
Irve J. Goldman, Pullman & Comley (by email)
Taruna Garg, Murtha Cullina LLP, co counsel to the Sherry-
Netherland, Inc. (by email)